IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3614 OF 2019

Kishore Mirchandani ….Petitioner

V/s.

Income Tax Officer International
Tax Ward 3(2)(1), Mumbai …Respondent

Mr. Percy Pardiwalla, Senior Advocate a/w Mr. Ashish Sodhani and Mr.Afaan Arshad i/b Nishith Desai Associates for Petitioner.
Mr. P.C. Chhotaray for Respondents-Revenue.

CORAM : K.R. SHRIRAM &
R.N. LADDHA, JJ.
DATED : 5th JANUARY, 2022

P.C. :

1. Mr. Pardiwalla states that the basis of initiation of proceedings under Section 147 of the Income Tax Act, 1961 (the Act) now no longer survives in the light of the Taxation Laws (Amendment) Act, 2021 whereby amendments have been effected to Section 9 of the Act and in particular to explanation 5. Mr. Pardiwalla further submitted that by virtue of the Amendment Act, it is clarified that nothing in explanation 5 shall apply to the proceedings inter alia Section 147 and the notice is one without jurisdiction and consequently, proceedings pursuant thereto are required to be set aside. Mr. Pardiwalla further submitted that there were identical matters before the Hon'ble High Court of Karnataka at Bengaluru where a bunch of 8 or 9 petitions were disposed because respondents had filed a memo as under :

"The petitioner in the above matter has challenged the reopening

of assessment under Section 148 of the Act for the Assessment Year 2012-13. During the course of hearing the assessee contended that in view of Amendment to Section 9 of the Act by Taxation Laws (Amendment) Act 2021 dated 30/08/2021, the transaction being prior to 28/05/2012, the reopening of assessment is not sustainable. The contention of the assessee has been examined and the said contention is correct.

Wherefore it is respectfully prayed that this Hon'ble Court may be pleased to pass appropriate orders in the interest of justice and equity."

2. Mr. Chhotaray states that this court can quash the impugned order dated 30th March, 2019 by which petitioner's objections were rejected and direct the concerned authority to consider Mr. Pardiwalla's statement as recorded above along with the objections already filed and pass such orders as deemed fit.

3. Mr. Pardiwalla states that it is not an unfair suggestion.

4. Therefore, the order dated 30th November, 2019 impugned in this petition is quashed and set aside.

5. Petitioner to place before the concerned authority their submissions alongwith copy of the order passed by the Hon'ble High Court of Karnataka at Bengaluru and the concerned authority shall consider the same and pass appropriate orders within 8 weeks from the date this order is uploaded. If petitioner requests, the concerned authority shall also give personal hearing to petitioner and date for personal hearing shall be communicated seven days in advance.

6. Petition disposed.

(R.N. LADDHA, J.) **(K.R. SHRIRAM, J.)**